

Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (Text with EEA relevance)

CHAPTER 1

**SUBJECT MATTER, SCOPE, DEFINITIONS AND COMPETENT AUTHORITIES**

*Article 1*

**Subject matter**

This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a credit, as a basis for the development of effective underwriting standards in relation to residential immovable property in the Member States, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions.

*Article 2*

**Level of harmonisation**

1 This Directive shall not preclude Member States from maintaining or introducing more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law.

2 Notwithstanding paragraph 1, Member States shall not maintain or introduce in their national law provisions diverging from those laid down in Article 14(2) and Annex II Part A with regard to standard pre-contractual information through a European Standardised Information Sheet (ESIS) and Article 17(1) to (5), (7) and (8) and Annex I with regard to a common, consistent Union standard for the calculation of the annual percentage rate of charge (APRC).

*Article 3*

**Scope**

1 This Directive shall apply to:

- a credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property; and
- b credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

2 This Directive shall not apply to:

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- a Equity release credit agreements where the creditor:
    - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and
    - (ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, as defined by Member States, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement;
  - b credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;
  - c credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
  - d credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
  - e credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
  - f credit agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of point (a) of paragraph 1.
- 3 Member States may decide not to apply:
- a Articles 11 and 14 and Annex II to credit agreements for consumers, secured by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, the purpose of which is not to acquire or retain the right to residential immovable property, provided that the Member States apply to such credit agreements Articles 4 and 5 of and Annexes II and III to Directive 2008/48/EC;
  - b this Directive to credit agreements which relate to an immovable property where the credit agreement provides that the immovable property cannot at any time be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement;
  - c this Directive to credit agreements which relate to credits granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable to the consumer than those prevailing on the market and at borrowing rates not higher than those prevailing on the market;
  - d this Directive to bridging loans;
  - e this Directive to credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC.
- 4 Member States which use the option referred to in point (b) of paragraph 3 shall ensure the application of an appropriate framework at a national level for this type of credit.
- 5 Member States which use the option referred to in point (c) or (e) of paragraph 3 shall ensure the application of adequate alternative arrangements to ensure consumers receive timely information on the main features, risks and costs of such credit agreements at the pre-contractual stage and that advertising of such credit agreements is fair, clear and not misleading.

## Article 4

### Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘Consumer’ means a consumer as defined in point (a) of Article 3 of Directive 2008/48/EC.
- (2) ‘Creditor’ means a natural or legal person who grants or promises to grant credit falling within the scope of Article 3 in the course of his trade, business or profession.
- (3) ‘Credit agreement’ means an agreement whereby a creditor grants or promises to grant, to a consumer, a credit falling within the scope of Article 3 in the form of a deferred payment, loan or other similar financial accommodation.
- (4) ‘Ancillary service’ means a service offered to the consumer in conjunction with the credit agreement.
- (5) ‘Credit intermediary’ means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
  - (a) presents or offers credit agreements to consumers;
  - (b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (a); or
  - (c) concludes credit agreements with consumers on behalf of the creditor.
- (6) ‘Group’ means a group of creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings<sup>(1)</sup>.
- (7) ‘Tied credit intermediary’ means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of:
  - (a) only one creditor;
  - (b) only one group; or
  - (c) a number of creditors or groups which does not represent the majority of the market.
- (8) ‘Appointed representative’ means a natural or legal person who performs activities referred to in point 5 that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary.
- (9) ‘Credit institution’ means credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013.
- (10) ‘Non-credit institution’ means any creditor that is not a credit institution.

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- (11) ‘Staff’ means:
- (a) any natural person working for the creditor, or credit intermediary who is directly engaged in the activities covered by this Directive or who has contacts with consumers in the course of activities covered by this Directive;
  - (b) any natural person working for an appointed representative who has contacts with consumers in the course of activities covered by this Directive;
  - (c) any natural person directly managing or supervising the natural persons referred to in points (a) and (b).
- (12) ‘Total amount of credit’ means the total amount of credit as defined in point (l) of Article 3 of Directive 2008/48/EC.
- (13) ‘Total cost of the credit to the consumer’ means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive 2008/48/EC including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.
- (14) ‘Total amount payable by the consumer’ means the total amount payable by the consumer as defined in point (h) of Article 3 of Directive 2008/48/EC.
- (15) ‘Annual percentage rate of charge’ (APRC) means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 17(2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.
- (16) ‘Borrowing rate’ means the borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC.
- (17) ‘Creditworthiness assessment’ means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.
- (18) ‘Durable medium’ means durable medium as defined in point (m) of Article 3 of Directive 2008/48/EC.
- (19) ‘Home Member State’ means:
- (a) where the creditor or credit intermediary is a natural person, the Member State in which his head office is situated;
  - (b) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated.
- (20) ‘Host Member State’ means the Member State, other than the home Member State, in which the creditor or credit intermediary has a branch or provides services.
- (21) ‘Advisory services’ means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit and from the credit intermediation activities set out in point 5.

- (22) ‘Competent authority’ means an authority designated as competent by a Member State in accordance with Article 5.
- (23) ‘Bridging loan’ means a credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the immovable property.
- (24) ‘Contingent liability or guarantee’ means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if an event or events specified in the contract occur.
- (25) ‘Shared equity credit agreement’ means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments.
- (26) ‘Tying practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.
- (27) ‘Bundling practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.
- (28) ‘Foreign currency loan’ means a credit agreement where the credit is:
- (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
  - (b) denominated in a currency other than that of the Member State in which the consumer is resident.

### *Article 5*

#### **Competent authorities**

1 Member States shall designate the national competent authorities empowered to ensure the application and enforcement of this Directive and shall ensure that they are granted investigating and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties.

The authorities referred to in the first subparagraph shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be creditors, credit intermediaries or appointed representatives.

2 Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or by this Directive. This shall not, however, prevent the competent authorities from exchanging or transmitting confidential information in accordance with national and Union law.

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3 Member States shall ensure that the authorities designated as competent for ensuring the application and enforcement of Articles 9, 29, 32, 33, 34 and 35 of this Directive are either or both of the following:

- a competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010;
- b authorities other than the competent authorities referred to in point (a) provided that national laws, regulations or administrative provisions require those authorities to cooperate with the competent authorities referred to in point (a) whenever necessary in order to carry out their duties under this Directive, including for the purposes of cooperating with the European Supervisory Authority (European Banking Authority) (EBA) as required under this Directive.

4 Member States shall inform the Commission and EBA of the designation of the competent authorities and any changes thereto, indicating any division of the respective duties between different competent authorities. The first such notification shall be made as soon as possible and at the latest on 21 March 2016.

5 The competent authorities shall exercise their powers in conformity with national law either:

- a directly under their own authority or under the supervision of the judicial authorities; or
- b by application to courts which are competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful, except for Articles 9, 29, 32, 33, 34 and 35.

6 Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.

7 The Commission shall publish a list of the competent authorities in the *Official Journal of the European Union* at least once a year, and update it continuously on its website.

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(1) [OJ L 182, 29.6.2013, p. 19.](#)